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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

No. 337. 337

RAILWAY LABOR EXECUTIVES' ASSOCIATION, *Appellant*,

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

Appeal from the United States District Court for the District of Columbia

REPLY TO PETITION FOR REHEARING

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Comes now the appellant, Railway Labor Executives' Association, and for its response to the Petition for Rehearing filed in the cause on April 10, 1950, respectfully says that the Petition is without merit and should be denied for the following reasons:

Petitioner argues that the Court, by proceeding to examine "fragments" of the legislative history of Section

5(2)(f) of the Interstate Commerce Act, has read into the statute a meaning not expressed by its plain language and has thereby encroached on the legislative powers of Congress. We submit that on the contrary the Court has interpreted the statute completely consistent with its "plain language" and in the only way in which its basic purpose can be heeded. When properly read, the opinion of the Court is perfectly clear on this proposition, and only a brief statement is required to answer the inaccurate and misleading interpretation of that opinion which is advanced in the petition for rehearing.

In the first place, the argument between appellant and the appellees has never been the usual one of dispute over the meaning of certain words in a statute which require resolution by resort to legislative history. The dispute between appellant and the appellees has been one of whether to give full force and effect to the plain language of not only the second but also the first sentence of Section 5(2)(f).

The language of the first sentence standing alone clearly requires the Commission to provide a fair and equitable arrangement for all employees adversely affected as a result of coordination transactions approved by the Commission. The second sentence then goes on to state a particular type of protection which the Commission must "include" in its order and then proceeds to limit the period of time in which that particular protection shall be required. But to conclude, as the railroad intervenors and the Commission do, that such time limitation is a limitation on the section as a whole, rather than on the provision of the second sentence in which it is found, not only violates the very language of the second sentence itself[1] but in reality reads the first sentence out of the statute and nullifies it com-

[1] As pointed out in the Court's opinion (p. 11 of slip copy), the proviso of the second sentence, which contains the time limitation, clearly limits its applicability to the second "sentence" rather than to the section as a whole.

pletely as though it did not exist. Actually, the very most that could ever be claimed for appellees' position is that the first sentence does not mean what it says because the second sentence nullifies its terms by providing a limitation inconsistent therewith. It was only by virtue of such a contention by the railroads, which was adopted by the Commission in the proceeding before it, that resort to legislative history became necessary in order to determine whether Congress intended to circumscribe the plain language of one sentence or provision by the language of another.

The opinion of this Court clearly and convincingly shows that such was not the intention of Congress. What petitioners slightingly refer to as "fragments of the legislative history", is rather a most painstaking review of the legislation from its inception to its conclusion, with the end result of establishing that at no time did Congress intend to undo with one hand what it had secured with the other.

This Court has uniformly recognized in many cases the propriety of giving effect to the basic purpose of legislation. Indeed, the Court has declared that even where the language of a statute is plain and unambiguous it would not be followed if to do so led to an unreasonable result plainly at variance with the basic legislative purpose. *American Trucking Assn.* v. *United States*, 310 U. S. 534, 543.

The basic purpose of Section 5(2)(f) undeniably was to give railroad workers dismissed and displaced as a result of carrier consolidation and coordination transactions a measure of protection through compensatory benefits for a reasonable period during which they could economically readjust themselves. The Commission's decision in this case did not do this. To say, as petitioners do, that Congress intended to protect only the few employees who might be dismissed prior to the completion of the terminal construction project at New Orleans, and to ignore the rest, is to fly in the face of the plain language of the first sentence of Section 5(2)(f) and its intent which was carefully explained at

the inception of the legislation and was never departed from up to and including the statements by the House conferees immediately prior to its passage by the Congress.

It is simply a patent inaccuracy for petitioners to state that the Court's opinion "contents itself with a review of the background leading up to the legislation" and overlooks and fails to examine or give consideration to "the committee report and legislative debate thereon to determine the meaning of the statute".[2] The exact converse is the fact. Not only does the Court carefully trace the history of the first and second sentences throughout the House proceedings,[3] where all the "vital and most important" comments referred to by petitioners occurred, but it pointedly calls attention to the remarks of Congressmen Lea and Wolverton (the two House conferees in charge of the bill and primarily responsible for the actual drafting of the provisions in question) which explained the purpose and the meaning of the several provisions immediately preceding passage of the legislation.[4]

Included in these specific references of the Court are two particularly significant statements. The first was made by Congressman Lea, Chairman of the House conferees. He pointed out that the legislation as finally agreed upon contained certain specific provisions that were required to be in the Commission's order but that "otherwise we do not tie its hands."[5] Such an observation could only refer to the discretion granted the Commission by the first sentence of the section, which the railroad intervenors and the Commission contend is tied by the time limitation of the second sentence.

The second significant statement, which further clarifies the previous statement of Congressman Lea, was made by

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[2] Petition, p. 6.

[3] Slip opinion, pp. 8-11.

[4] *Id.* at p. 10, note 16.

[5] See Appellants' brief to this Court, p. 50.

Representative Wolverton. In explaining the intent of the second conference committee which drafted the language which now appears in Section 5(2)(f), he first pointed out that the Harrington amendment, or second sentence of the section, "was not in the Senate bill in any form whatsoever". He then went on to explain the purpose of the first sentence, which was the Senate version of what was desired as well as the original House proposal, as one designed to assure at least a continuance of the Washington Agreement but also so phrased as to "not preclude the Commission from improving upon the terms of that agreement if necessary to provide equitable and fair treatment of employees affected by any consolidation or merger in the future".[6]

Accordingly, there is not only lack of merit in the position urged by petitioners but a wholly inaccurate description of the content of the Court's opinion. Since the stated purpose of the petition for rehearing is to enable the Court to give consideration to all of the aspects of the legislative history and "particularly those parts showing the intent of Congress in adopting the language recommended by the Second Conference Committee"[7]—something which the Court has already done as shown above—the petition obviously is lacking in substance and should be denied.

Petitioners entirely miss the significance of the Court's observation that if the Commission's interpretation of Section 5(2)(f) were upheld in this case it would mean that protection which is undeniably available under the non-mandatory provisions of the abandonment section of the Interstate Commerce Act is now denied by legislation which made the imposition of an equitable arrangement for the protection of employees mandatory.[8] That such an inconsistency of statutory purpose is not to be lightly ascribed to Congress is hardly answered by petitioners' statement

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[6] *Id.* at pp. 50-51.

[7] Petition, p. 8.

[8] Slip opinion, pp. 10-11, note 16.

that "Congress specifically rejected an attempt to extend Section 5(2)(f) to abandonment cases under Section 1(18) to (20) of the Interstate Commerce Act."[9] The fact that Congress did so is of course addressed only to the requirement of protection, not its permissible nature or extent, as was made clear by this Court's decision in *Interstate Commerce Commission* v. *Railway Labor Executives' Assn.*, 315 U. S. 373.

Finally, no attempt is made by petitioners to meet one of the most vital defects in the Commission's interpretation of the statute—its inconsistency with this Court's previous decisions in *United States* v. *Lowden*, 308 U. S. 225, and *Interstate Commerce Commission* v. *Railway Labor Executives' Association*, 315 U. S. 373.[10]

Conclusion.

For the foregoing reasons, it is respectfully submitted that the petition for rehearing should be denied.

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[9] Petition, p. 8.
[10] Slip opinion, p. 12.